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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,251	04/03/2004	Lien L. Wiley	169-7.APP	1801

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EXAMINER

LE, HUYEN D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/817,251

Applicant(s)

WILEY, LIEN L.

Examiner

Huyen Le

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-8,10-13 and 15-18 is/are rejected.
- 7) ☒ Claim(s) 2-4,9,14,19 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Wiley (6,126,352).

The Wiley reference discloses a dispenser comprising: a reservoir 14 having an outer surface which is a right circular cylinder about an axis, the outer surface having an upper end and a lower end, screw threads 20 formed on the surface adjacent the upper end and screw threads 20 formed on the surface adjacent the lower end; a tubular extension handle 16 being sized to surround the reservoir 14 and the threads 20 thereon, the extension handle 16 having interior threads 22 thereon sized to engage the threads 20 adjacent the upper end and the threads 20 adjacent the lower end of the reservoir surface, the threads being positioned so that when the threads 22 within the extension handle 16 engage on the threads 20 on the exterior surface adjacent the upper end of the reservoir 14, the handle 16 is unextended on the reservoir 14 and when the threads 22 in the extension handle 16 engage on the threads 22 on the surface of the reservoir 14 adjacent its lower end, the handle 16 is extended.

Regarding claim 5, the reservoir 14 has a spout 26 and a dispenser 12 is attached to the spout 26, the dispenser 12 having a neck and a roller carrier basket 42

on the neck, a passage from the reservoir 12 through the spout 26 and through the neck to the roller basket 42, the roller basket 42 having end walls; a roller 44 in the roller basket 42, the roller 44 having pivot structure thereon and the roller basket 46 having pivot structure thereon in the end walls so that the roller 44 is pivoted to roll in the roller basket 42.

Regarding claim 6, the pivot structure between the roller and the roller basket 42 includes a slot 38 in the pivot structure to permit the roller 44 to move toward and away from the fluid passage 32 so that urging the roller 44 toward the fluid passage closes off the fluid passage to inhibit fluid flow.

Regarding claim 7, there is a cover 46 being sized to engage over the roller 46 and attach onto the roller basket 42, to thrust the roller 44 toward the fluid passage 32.

Regarding claim 8, the roller pivot structure comprises pivot pins on the ends of the roller 44 and slots in the roller basket 42.

3. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Stewart (4,150,904).

The Stewart reference discloses a dispenser comprising: a reservoir 13, an extension handle 14 on the reservoir 13; a fluid dispenser 12 on the outlet to receive fluid from the reservoir 13, the fluid dispenser 12 having a neck and having a roller basket 140 (Fig. 5) thereon, a passage from the reservoir 13 through the neck to the roller basket 140 to permit fluid to flow from the reservoir 13 to the roller basket 140, a valve 40 in the fluid passage to control flow of fluid through the passage; and a roller 11

in the roller basket 140, the roller 11 being rotatable in the roller basket 140 so that the roller 11 can be drawn over the skin to rotate and apply fluid to the skin.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley (6,126,352).

The Wiley reference discloses the dispensing basket 42 has an open side in which the roller 44 is disposed. Although Wiley does not disclose that the basket 42 has its open side directed at an angle of about 135 degrees with respect to the axis of the reservoir, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a certain angle for the open side of the roller basket with respect to the axis of the reservoir to best fit the dispenser and to optimize its performance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ (CCPA 1980).

6. Claims 11, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley (6,126,352) in view of Bengston (5,051,016)

Although Wiley does not disclose a valve between the reservoir and the roller basket, attention is directed to the Bengston reference which teaches another dispenser having a valve 34 between the reservoir 22 and the dispenser head 16.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a valve on the Wiley dispensing device in view of the teaching of the Bengston reference for controlling the flow from the fluid to the dispenser head.

7. Claims 15, 17, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley (6,126,352) in view of Bengston (5,051,016) as described above and further in view of Carlson (2,029,056).

The Stewart reference discloses a channel 30 disposed in the roller basket, being connected to the passage, directed along the roller axis, and delivering fluid to the roller along its length.

Although Wiley does not specifically disclose a channel directed along the roller axis for delivering the fluid along its length and the roller being an oblate spheroid, attention is directed to the Carlson reference which teaches a dispenser having a channel 9 in the dispensing head, the channel being oblong in cross-section for delivering the fluid along its length and a roller being an oblate spheroid for fitting into the angles and recesses of the facial contour more conveniently.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an oblong channel Wiley dispensing head and an oblate spheroid shaped roller on the Wiley dispensing device in view of the teaching of Carlson

for delivering the fluid along its length and applying the facial contour more conveniently.

Regarding claim 17, the dispenser includes a cap 46 for engaging the step on the roller basket and to press the roller toward the passage and toward channel.

Regarding claim 18, the rotatable mounting structure for rotatably mounting the roller 44 in the basket for rotation about the axis includes a pin on the roller 44 and a groove 38 in the roller basket so that the roller 44 can move crosswise of its axis toward and away from passage in the channel.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley (6,126,352) in view of Bengston (5,051,016) and Carlson (2,029,056) as described above.

Although Wiley does not specifically disclose that the basket 140 has its open side directed at an angle of about 225 degrees with respect to the axis of the reservoir, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a certain angle for the open side of the roller basket with respect to the axis of the reservoir to best fit the Stewart dispenser and to optimize its performance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ (CCPA 1980).

9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (4,150,904) in view of Carlson (2,029,056).

The Stewart reference discloses a channel 30 disposed in the roller basket, being connected to the passage, directed along the roller axis, and delivering fluid the roller along its length.

Although Stewart does not disclose the roller being an oblate spheroid, attention is directed to the Carlson reference which teaches a dispenser having a roller being a oblate spheroid for fitting into the angles and recesses of the facial contour more conveniently.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an oblate spheroid shaped roller on the Stewart dispensing device in view of the teaching of Carlson for applying the facial contour more conveniently.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (4,150,904) in view of Carlson (2,029,056).

Although Stewart does not disclose that the basket 140 has its open side directed at an angle of about 225 degrees with respect to the axis of the reservoir, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a certain angle for the open side of the roller basket with respect to the axis of the reservoir to best fit the Stewart dispenser and to optimize its performance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ (CCPA 1980).

Allowable Subject Matter


11. Claims 2-4, 9, 14, 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Huyen Le
Examiner
Art Unit 3751

April 14, 2006